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Legal Representatives for Complainant

**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

APRIL C. NEELY
1473 Sumner Avenue
Napa, CA 94558

Respiratory Care Practitioner License No. 19331

Respondent.

Case No. R-2004

**DEFAULT DECISION
AND ORDER**

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about October 20, 2005, Complainant Stephanie Nunez, in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs, filed Accusation R-2004 against April C. Neely (Respondent) before the Respiratory Care Board.

2. On or about April 24, 1997, the Respiratory Care Board (Board) issued Respiratory Care Practitioner License No. 19331 to Respondent. The Respiratory Care Practitioner License expired on November 30, 2002, and has not been renewed.

3. On or about October 20, 2005, Jennifer Porcalla, an employee of the Complainant Agency, served by Certified and First Class Mail a copy of the Accusation R-2004, Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code

1 sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board, which
2 was and is 1473 Sumner Avenue, Napa, CA 94558. A copy of the Accusation, the related
3 documents, and Declaration of Service are attached as **Exhibit A**, and are incorporated herein by
4 reference.

5 4. Service of the Accusation was effective as a matter of law under the
6 provisions of Government Code section 11505, subdivision (c).

7 5. On or about November 3, 2005, the Accusation mailed via regular mail
8 was returned by the U.S. Postal Service marked "Return to Sender - attempted not known-no
9 forward order on file." On November 10, 2005, the Accusation mailed via certified mail was
10 returned to the Board. A copy of the postal returned documents are attached hereto as **Exhibit**
11 **B**, and are incorporated herein by reference.

12 6. Business and Professions Code section 118 states, in pertinent part:
13 "(b) The suspension, expiration, or forfeiture by operation of law of a license
14 issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the
15 board or by order of a court of law, or its surrender without the written consent of the board,
16 shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive
17 the board of its authority to institute or continue a disciplinary proceeding against the licensee
18 upon any ground provided by law or to enter an order suspending or revoking the license or
19 otherwise taking disciplinary action against the license on any such ground."

20 7. Government Code section 11506 states, in pertinent part:

21 "(c) The respondent shall be entitled to a hearing on the merits if the respondent
22 files a notice of defense, and the notice shall be deemed a specific denial of all parts of the
23 accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of
24 respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

25 8. Respondent failed to file a Notice of Defense within 15 days after service
26 upon her of the Accusation, and therefore waived her right to a hearing on the merits of
27 Accusation R-2004.

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9. California Government Code section 11520 states, in pertinent part:

"(a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent."

10. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on Respondent's express admissions by way of default and the evidence before it, contained in exhibits A, B, C and D (certified copies of Solano County Superior Court documents in case no. VCR 176397), finds that the allegations in Accusation R-2004 are true.

11. The Board further finds that pursuant to Business and Professions Code section 3753.5, the costs of investigation and enforcement of the case prayed for in the Accusation total \$1,035.00, based on the Certification of Costs contained in **Exhibit C**.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent April C. Neely has subjected her Respiratory Care Practitioner License to discipline.

2. A copy of the Accusation and the related documents and Declaration of Service are attached.

3. The agency has jurisdiction to adjudicate this case by default.

4. The Respiratory Care Board is authorized to revoke Respondent's Respiratory Care Practitioner License based upon the following violations alleged in the Accusation:

a. Respondent is in violation of code sections 3750(d), 3752 and 3750(g) in that on January 5, 2005, she entered a guilty plea to a violation of Health & Safety Code section 11364, possession of drug paraphernalia.

5. Respondent is hereby ordered to pay the above costs of investigation and enforcement of this action.

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ORDER

IT IS SO ORDERED that Respiratory Care Practitioner License No. 19331, heretofore issued to Respondent April C. Neely, is revoked.

Respondent is ordered to reimburse the Respiratory Care Board the amount of \$1,035.00 for its investigative and enforcement costs. The filing of bankruptcy by Respondent shall not relieve Respondent of her responsibility to reimburse the Board for its costs. Respondent's Respiratory Care Practitioner License may not be renewed or reinstated unless all costs ordered under Business and Professions Code section 3753.5 have been paid.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on February 20, 2006.

It is so ORDERED January 20, 2006.

Original signed by:

FOR THE RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
LARRY L. RENNER, BS, RRT, RCP,
RPFT, RCB PRESIDENT

Attachments:

Exhibit A: Accusation R-2004, Related Documents, and Declaration of Service
Exhibit B: Postal Return Documents
Exhibit C: Certificate of Costs
Exhibit D: Certified copies of court documents in Solano County Superior Court case no. VCR 176397